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Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors

B

HIGH COURT (KUCHING) — APPLICATION FOR JUDICIAL REVIEW NO KCH-25–4/5 OF 2014
RHODZARIAH BUJANG J
7 JANUARY 2015

C

Islamic Law — Conversion — Conversion out of Islam — Applicant born as Malay embraced Christianity — Applicant sought leave of High Court to issue mandamus to compel authorities to issue her with letter of release from Islam and to change particulars on identity card to reflect her new faith — Whether subject matter of application non-justiciable by High Court and was solely within jurisdiction of Syariah Court

D

The applicant, a Malay by race and born and brought up as a Muslim by her Muslim parents, embraced Christianity and filed the instant application for leave to apply for an order of mandamus to compel the first and/or second respondents to issue her with the letter of release from Islam and to compel the third respondent to change the particulars in her identity card to reflect her Christian name and faith.

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Held, dismissing the application:

(1) The subject matter of the instant application was non-justiciable by the High Court. The High Court did not have the jurisdiction to grant the remedies sought by the applicant as the Federal Court had consistently held that apostasy was a matter within the sole jurisdiction of the Syariah Court (see paras 3–4 & 7).

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(2) Unless and until the applicant obtained her letter of release from Islam, the third respondent could not be compelled by mandamus to effect the change she wanted in her identity card. The first respondent, in turn, could not be compelled by the High Court to issue that letter of release as the court had no jurisdiction over matters of apostasy which was within the sole province of the Syariah Court (see para 9).

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I

[Bahasa Malaysia summary

Pemohon, berbangsa Melayu dilahirkan dan dibesarkan sebagai seorang Muslim oleh kedua-dua ibubapa yang juga Muslim, memeluk agama Kristian dan memfailkan permohonan ini untuk izin memohon perintah mandamus bagi memaksa responden pertama dan/atau kedua mengeluarkan kepadanya

surat perlepasan daripada agama Islam dan untuk memaksa responden ketiga untuk menukar butir-butir kad pengenalannya bagi membayangkan nama Kristian dan agamanya.

Diputuskan, menolak permohonan:

(1) Perkara permohonan ini tidak boleh diadili oleh Mahkamah Tinggi. Mahkamah Tinggi tidak mempunyai bidang kuasa untuk memberikan remedi yang dipohon oleh pemohon memandangkan Mahkamah Persekutuan telah secara konsisten memutuskan bahawa murtad adalah perkara dalam satu-satunya bidang kuasa Mahkamah Syariah (lihat perenggan 3–4 & 7).

(2) Kecuali dan sehingga pemohon memperolehi surat perlepasan daripada Islam, responden ketiga tidak dapat dipaksa oleh mandamus untuk menguat kuasakan pertukaran yang dikehendakinya di dalam kad pengenalannya. Responden pertama, sebaliknya, tidak dapat dipaksa oleh Mahkamah Tinggi untuk mengeluarkan surat pelepasan kerana mahkamah tidak mempunyai bidang kuasa ke atas perkara murtad yang mana adalah dalam satu-satunya bidang kuasa Mahkamah Syariah (lihat perenggan 9).]]

Notes

For cases on conversion out of Islam, see 8(1) *Mallal's Digest* (5th Ed, 2015) paras 659–660.

Cases referred to

Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal [2014] 3 MLJ 757, FC (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585, FC (refd)

Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors [2003] 3 MLJ 705, FC (refd)

QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 3 MLJ 164; [2006] 2 CLJ 532, CA (refd)

Robert Linggi v The Government of Malaysia [2011] 2 MLJ 741; [2011] 7 CLJ 373, HC (refd)

Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 1 MLJ 489; [1999] 2 CLJ 5, FC (refd)

Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors [2006] 5 MLJ 60; [2006] 1 CLJ 927, CA (refd)

Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd [1995] 2 MLJ 442, SC (refd)

Legislation referred to

Federal Constitution arts 121, (1A)
Majlis Islam Sarawak Ordinance 2001 ss 68, 69

Simon Siah (Baru Bian & Co) for the plaintiff.
Saferi bin Ali (Senior State Counsel, State Attorney General's Chambers) for the first, second and fourth respondents.
Mohd Taufik bin Mohd Yusoff (Senior Federal Counsel, Attorney General's Chambers) for the third and fifth respondents.

Rhodzariah Bujang J:

[1] The applicant, a Malay by race was born and brought up as a Muslim by her Muslim parents. She is about 32 years of age, going by her national registration identity card ('NRIC') number in the cause papers and is, according to the same papers filed in court, a Christian convert, which new-found faith she embraced out of her own free will. What is more she has been baptised in the All Saints' Chapel, Tabuan Dayak Kuching on 3 October 2009. She has filed this application for mandamus to compel the first and/or second respondent to issue her with the letter of release from Islam, for the third respondent, the Director General of National Registration Malaysia to change her given name to Vanessa Elizabeth, to drop Islam as the religion in her NRIC and reflect her present faith in it.

[2] Her struggle to be recognised as a Christian started two years after her baptism when she first approached the National Registration Department Kuching and the Jabatan Agama Islam Sarawak in July and August 2011 for the change in name and status and for the letter of release, respectively. She was officially informed by a letter by the National Registration Department to first obtain that letter of release. At the first respondent's office in Kuching she deposed that she met one Ustazah Hanisah Nahrawi who informed her that she has to go to the Syariah Court and attend counselling sessions, which sessions never materialised and her lawyer's effort made on her behalf, for a list of criteria to be fulfilled in order to renounce Islam was equally futile. She has therefore filed this application for leave to file judicial review against the said government officers/departments for orders which I have mentioned earlier in addition to a principal prayer for a declaration that she is a Christian. Though the leave application was filed ex parte the same was heard inter partes and I am aided in this ruling by the diligent work of not just the applicant's counsel, Mr Simon Siah but by both the officers from the state attorney general chambers and the federal attorney general chambers, Mr Saferi Ali and Mr Mohd Taufik bin Mohd Yusoff respectively.

[3] In order to succeed being granted the leave, I must be satisfied that the

reliefs sought by the applicant merits consideration 'on a full inter parte basis with all such evidence as is necessary on the facts and all such argument as is necessary on the law' but if there is 'no arguable case' I must dismiss the application for leave (see *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd* [1995] 2 MLJ 442). When I read the applicant's affidavit it is clear to me that there is no arguable case for her in this case because I simply do not have the jurisdiction to grant the remedies relating to her renouncement of the religion of her birth.

JURISDICTIONAL ISSUE

[4] The Federal Courts have consistently spoken that apostasy is a matter within the jurisdiction of the Syariah Court. For reference I would list the cases as follows:

(a) *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489;

(b) *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors* [2003] 3 MLJ 705;

(c) *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585; and

(d) *Hj Raimi bin Abdullah v Siti Hasnah Vangarama bt Abdullah and another appeal* [2014] 3 MLJ 757.

[5] The Federal Court in its latest decision in *Hj Raimi*'s case have decided, following that of *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489; [1999] 2 CLJ 5 that the issue of whether a person is a Muslim or not falls within the exclusive jurisdiction of the Syariah Court because 'since matters on conversion to Islam come under the jurisdiction of the Syariah Court *by implication* conversion out of Islam should also fall under the jurisdiction of the same courts' (per Mohd Dzaiddin FCJ in *Soon Singh*'s case).

[6] The argument of the applicant that the Majlis Islam Sarawak Ordinance does not provide for renunciation of Islam; only conversion under s 68 and s 69 thereof and therefore the applicant can seek recourse from the civil courts, cannot in the face of the words underlined above be accepted as even the various State Enactment in Peninsular Malaysia mentioned in His Lordship's judgment also do not have a specific provision on the renouncement.

[7] Mr Saferi Ali has also cited in his written submission the recent decision of the Court of Appeal, delivered on 3 September 2014 applying also *Lina Joy*'s ratio wherein Noraini Soon Mohamed Ivan Soon, the appellant's appeal

against the refusal of the National Registration Department to remove the religion of Islam from her identity card which she said was mistakenly stated as Islam given that both her and her mother were Buddists, was also dismissed. The position of the High Court in respect of the reliefs sought relating to apostasy made clear from the above quoted decisions is therefore not open to further debate, for as long as there is no inconsistent stand made by the same court. The Court of Appeal, twice, in the judgments of the same judge, Gopal Sri Ram JCA (as His Lordship then was) reiterated another position of the law relevant to this leave application which further buries it and that is that the court will refuse leave if it is a case where the subject matter of the review is one which by settled law either by written law or the common law is non-justiciable (see *QSR Brands Bhd v Suruhanjaya Sekuriti & Anor* [2006] 3 MLJ 164 at p 168; [2006] 2 CLJ 532 at p 537 and *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors* [2006] 5 MLJ 60 at p 68; [2006] 1 CLJ 927 at p 943). It is equally non-justiciable, if I may respectfully add, when the position of the law has been settled by case law, the principle of which I am bound by the doctrine of stare decisis to follow. Though I would not say that this leave application is frivolous for I do not think that in a matter as important as a person's faith and desire to follow it in his/her daily life can be considered as such, it is the non-justiciability of the subject matter which must guide my hands in making this decision.

[8] As for the argument of the applicant that art 121(1A) of the Federal Constitution was made without the consent of the Yang Di Pertua Negeri of Sabah and Sarawak, the same argument was taken up before David Wong Dak Wah J (as His Lordship then was) in *Robert Linggi v The Government of Malaysia* [2011] 2 MLJ 741; [2011] 7 CLJ 373 and in a supplementary judgment appearing at p 764 (MLJ); p 398 (CLJ) thereof, His Lordship has reproduced the letters of consent from the Yang Di Pertua Negeri of both states which clearly show that such a concurrence was in fact obtained before the amendment to art 121 was made and that includes the introduction of art 121(1A). Coming as it were from the judgment of the court of not just competent jurisdiction but also from the same part of Malaysia, I have no doubt on the veracity of what is reproduced in that judgment.

[9] To conclude I would say this. Unless and until the applicant obtains her letter of release from Islam, the third respondent cannot be compelled by mandamus to effect the change that she wanted. The first respondent in turn cannot be compelled to issue the letter of release by me because I do not have the jurisdiction over matters of apostasy which is the sole province of the Syariah Courts as have been decided by the Federal Court cases I have listed above. In arriving at this decision I am fully aware of the guarantee on the freedom of religion in the Federal Constitution and that I had taken an oath of office to uphold its provisions. I have been reminded of the sanctity of the

relevant provisions by the applicant's counsel but I believe I am not committing a sacrilege of that oath in this case because in the exercise of my duties I am also dictated by doctrines and conventions. The application for leave is therefore dismissed but with no order as to cost as graciously agreed by the respondents' counsel.

Application dismissed.

Reported by Ashok Kumar